Living Up To the Pecora Commission's Legacy

The upcoming film *Wall Street 2: Money Never Sleeps* features Michael Douglas reprising his role as unscrupulous financier Gordon Gekko. The trailer includes a voice-over by Douglas as Gekko saying, "Someone reminded me I once said 'Greed is good.' Now, it seems, it's legal."

That might make for a good sound bite, but it doesn't make sense. Greed has never been illegal. It can, however, serve as a catalyst for illegal behavior. According to director Oliver Stone, the original *Wall Street* was intended to be a morality tale that warned against the excesses of greed. Instead, it inspired a new generation to pursue a career in finance, with Gekko as role model.

Obviously, our current financial crisis is the result of much more than a misguided generation of bankers who watched a blockbuster film as teenagers. Humans have evolved to be greedy in order to secure our species' survival. For the sake of a functioning society, we draft laws that allow us to accumulate resources but prevent greed from destroying the whole for the sake of a few.

During the last decade, our system of checks and balances failed, sending our financial system off a cliff and nearly dragging the entire economy after it. How did this happen? Perhaps now we have the means to find out.

Examining the Causes

The first public hearings conducted by the Financial Crisis Inquiry Commission (FCIC) were held in early January 2010, with the CEOs of some this country's largest banks and regulators called to testify. The FCIC is a 10-member, bipartisan committee charged with "examining the causes, domestic and global, of the current financial and economic crisis." A report is due to the President on December 15 of this year.

The commission possesses expertise in everything from banking to taxation to consumer protection. The Fraud Enforcement and Recovery Act of 2009 requires the FCIC to examine 22 specific areas related to the financial crisis, including fraud and abuse in the financial sector; accounting practices, such as mark-to-market and fair value; corporate governance; compensation; and tax treatment of financial products and investments.

The commission has subpoena power. It should use that power to prepare a comprehensive report on the epic failure of—and, even more importantly, to suggest substantive changes to—the market practices of financial institutions.

Commissions like this too often devolve into public forums for grandstanding without effecting any real change. A good end result would be for the FCIC to have the same impact that the Pecora Commission did, the recommendations of which changed the practices of the financial sector in the wake of the 1929 stock market crash.

Ferdinand Pecora was a New York City assistant district attorney in 1933 when he was asked to take over the hearings investigating the causes of the crash. The commission had already been hearing testimony for a year at that point, and Pecora was simply asked to report on what the hearings had produced so far. Pecora said he could not write such a report because nothing substantive had come from the hearings. But he asked the Senate Committee on Banking and Currency for two things: another month to conduct further hearings and subpoena power.

Duly armed, Pecora led a new round of hearings that led directly to three critical pieces of legislation—the Securities Act of 1933, the Glass-Steagall Act of 1933, and the Securities Exchange Act of 1934—as well as the formation of the Federal Deposit Insurance Corporation.

Asking the Tough Questions

Unfortunately, there are no CPAs on the FCIC. One commissioner, however—banking, corporate, and financial attorney Peter J. Wallison—understands the role of accountancy in the financial system. He is the author of *The GAAP Gap: Corporate

Disclosure in the Internet Age*, and in 2008 served as a member of the SEC Advisory Committee on Improvements to Financial Reporting. He also served as general counsel to the Treasury Department under the Reagan administration, where he had a significant role in its proposal for deregulation in the financial services industry.

FCIC Vice Chairman and former House Ways and Means Chairman Bill Thomas said the commission will "pursue the evidence where it leads." Let's hope Wallison's prior advocacy for deregulation does not preclude him from asking the tough questions.

Because we need answers. On the first day of the public hearings in January, Bank of America CEO Brian Moynihan testified, "Over the course of the crisis, we, as an industry, caused a lot of damage."

We already knew that.

Now we need to know why. We need to understand why this industry collapsed and, more importantly, what regulatory measures can be taken to ensure that it doesn't happen again.

Perhaps the power of the subpoena will help to do just that. ❑

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